

ROBERTO MANUEL CHAVEZ YANEZ,
INDIVIDUALLY, ON BEHALF OF
THEMSELVES AND ROBERTO
CHAVEZ CELIS, DECEASED; LETICIA
CELIS ORTEGA, INDIVIDUALLY, ON
BEHALF OF THEMSELVES AND
ROBERTO CHAVEZ CELIS,
DECEASED; SUSANA CHAVEZ CELIS,
INDIVIDUALLY, ON BEHALF OF
THEMSELVES AND ROBERTO
CHAVEZ CELIS, DECEASED; CESAR
CHAVEZ CELIS, INDIVIDUALLY, ON
BEHALF OF THEMSELVES AND
ROBERTO CHAVEZ CELIS,
DECEASED; AND MIGUEL CHAVEZ
CELIS, INDIVIDUALLY, ON BEHALF
OF THEMSELVES AND ROBERTO
CHAVEZ CELIS, DECEASED;

VS.

Defendants.

Before the Court is the above-styled cause of action, in which the District Court referred the following dispositive and non-dispositive motions for disposition: the Motion to Dismiss filed by WWGAF, Inc. d/b/a Rockin R River Rides (“Defendant Rockin R”) [#20],¹ the Motion to Dismiss filed by Defendant UME, Inc. d/b/a Camp Huaco Springs (“Defendant UME”) [#23],² Defendants’ Joint Motion for Summary Judgment [#30], Defendants’ Second Joint Motion for Status Conference and for Protection [#32], Plaintiffs’ Motion to Strike Affidavit of W.O.R.D. General Manager Michael Dussere and Motion for FRCP 56(h) Sanctions [#35], Plaintiffs’

² The motion to dismiss is contained in Defendant UME's Answer [#23].

FRCP(a)(3)(A) Motion to Compel Defendant WWGAF, Inc. d/b/a Rockin River Rides to Produce Insurance Policy [#36], Defendant UME, Inc. d/b/a Camp Huaco Springs' Motion for Protective Order and Motion to Quash Plaintiffs' Notice of Intention to Take the Oral Deposition of Mike Dussere [#37], Plaintiffs' Motion for Continuance of Defendants' Joint Motion for Summary Judgment and Plaintiffs' Motion to Compel Discovery [#43], and Plaintiffs' Motion for Leave to File Second Amended Complaint [#47].

On this day, the Court held a hearing on all pending motions, at which counsel for Plaintiffs and Defendants were present. Prior to the hearing, the parties resolved the majority of their disputes. At the close of the hearing, the Court issued certain oral rulings with respect to the remaining disputed issues, which it now memorializes with this written order. For the reasons stated on the record at the hearing,

IT IS HEREBY ORDERED that the motion to dismiss contained in Defendant WWGAF, Inc. d/b/a Rockin R River Rides' FRCP 12(b)(6) Response [#20] is **DISMISSED AS MOOT** as superseded by Defendants' Motion for Summary Judgment.

IT IS FURTHER ORDERED that the motion to dismiss contained in Defendant UME, Inc. d/b/a Camp Huaco Springs FRCP 12(b)(6) Response [#23] is **DISMISSED AS MOOT** as superseded by Defendants' Motion for Summary Judgment.

IT IS FURTHER ORDERED that Plaintiffs' Motion to Strike Affidavit of W.O.R.D. General Manager Michael Dussere and Motion for FRCP 56(h) Sanctions [#35] is **DISMISSED AS MOOT** in light of the parties' agreement to conduct the deposition of Michael Dussere on March 20, 2020.

IT IS FURTHER ORDERED that Plaintiffs' FRCP(a)(3)(A) Motion to Compel Defendant WWGAF, Inc. d/b/a Rockin River Rides to Produce Insurance Policy [#36] is

DISMISSED AS MOOT in light of Rockin R's production of the insurance policy on February 10, 2020.

IT IS FURTHER ORDERED that Defendant UME, Inc. d/b/a Camp Huaco Springs' Motion for Protective Order and Motion to Quash Plaintiffs' Notice of Intention to Take the Oral Deposition of Mike Dussere [#37] is **DISMISSED AS MOOT** in light of the parties' agreement to conduct the deposition of Mike Dussere on March 20, 2020.

IT IS FURTHER ORDERED that Defendants' Second Joint Motion for Status Conference and for Protection [#32] is **GRANTED** in light of the failure of Plaintiffs' to demonstrate a basis for the requested fact discovery while the Court evaluates the threshold issue of legal duty.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Continuance of Defendants' Joint Motion for Summary Judgment and Plaintiffs' Motion to Compel Discovery [#43] is **DENIED** in light of the failure of Plaintiffs' to demonstrate a basis for the requested fact discovery while the Court evaluates the threshold issue of legal duty. However, Plaintiffs may identify in their response to Defendants' Joint Motion for Summary Judgment any fact issues that they contend the resolution of which would affect the Court's analysis of whether Defendants owed a legal duty to the decedent.

IT IS FURTHER ORDERED that Plaintiffs file a response to Defendants' Motion for Summary Judgment within **14 days** of the Dussere deposition.

IT IS FURTHER ORDERED that Plaintiffs file an advisory within **three days** of the Dussere deposition indicating whether they intend to withdraw their Motion for Leave to File Second Amended Complaint [#47] as represented at the hearing. Defendants' deadline to respond to this motion is held in abeyance until further order of the Court.

IT IS FINALLY ORDERED that Defendants WWGAF, Inc. d/b/a Rockin R River Rides and UME, Inc. d/b/a Camp Huaco Springs' Joint Motion for Summary Judgment [#30] remains pending for the undersigned's consideration and issuance of a report and recommendation to the District Court after Plaintiffs file their response.

SIGNED this 26th day of February, 2020.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE